

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 1174 of 1994****For Approval and Signature:****HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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GUJARAT STATE ROAD TRANSPORT CORPORATION. - Appellant(s)**Versus****SANJAJI SURAJIBHAI NINAMA & 1 - Defendant(s)**

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Appearance :

MR HEMANT S SHAH for Appellant(s) : 1,

MR JV JAPEE for Defendant(s) : 1,

NOTICE SERVED for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**Date : 13/02/2007****ORAL JUDGMENT**

1. The Gujarat State Road Transport Corporation has
filed this appeal under the provisions of Motor Vehicles
Act [hereinafter referred to as the "Act"]. It has

challenged the judgment and award made by MACT [Auxi.] Sabarkantha at Himmatnagar dated 28th February, 1994 in MACP No. 696 of 1989. By the said award the Tribunal has awarded the original claimant i.e., respondent no. 1 a sum of Rs.70,525=00 by way of compensation together with interest at the rate of 12% per annum from the date of the application till realization and proportionate costs. The compensation has been granted due to the injuries received in a vehicular accident which took place on 20th September, 1989 at about 2:45 p.m.

2. On the relevant date, respondent no. 1 was driving Jeep car bearing registration no. GR No. 1121 and he was going to Sunokh from Modasa. When he reached place called Rameshrakampa around 2:25 p.m., he halted his vehicle on the correct side. At that time, respondent no. 2 approached there with his bus belonging to the appellant bearing registration no. GR 7480 from the opposite direction and he dashed it against the jeep. As a result of the same, respondent no. 1 was thrown out of the vehicle and he received serious injuries. According to him, he had sustained fracture of nasal bone and also lost his eye. He was removed to Modasa Sarvajanic Hospital for treatment. Subsequently he preferred the aforesaid petition to obtain compensation of Rs. 1 lakh.

3. Before the Tribunal, respondent no. 2 did not appear. So far as the appellant was concerned, he resisted the claim by filing written statement at Exh. 17. It denied the averments made in the claim petition. It was contended that there was no negligence on the part of the driver of the bus i.e., respondent no. 2. It was averred that actually respondent no. 1 the original claimant drove his vehicle in a rash and negligent manner and because of the same, the accident occurred.

4. On the basis of the material produced before it, including the oral evidence, the Tribunal concluded that it was respondent no. 2 who was wholly responsible for causing the accident. The Tribunal also assessed the compensation and held that respondent no. 1 was entitled to receive Rs.70,525=00 together with interest and costs as stated above. Hence, this appeal.

5. I have heard Mr. Hemant Shah learned advocate for the appellant and Mr. J.V. Japee learned advocate for respondent no. 1. It is submitted by Mr. Shah that the Tribunal has erred in deciding the issue of negligence. According to him, the evidence on record clearly shows that it was respondent no. 1 who was negligent and the

accident occurred only because of his negligence. Mr. Shah has submitted that respondent no. 1 did not possess any valid license to drive the vehicle and hence his negligence is eloquent. He has, therefore, submitted that the claim petition deserves to be dismissed. So far as the quantum is concerned, he has not advanced any submissions. As against that Mr. Japee has supported the judgment and has submitted that the question with regard to negligence has been properly decided by the Tribunal on the basis of the evidence before it and no interference is required by this Court.

6. I have carefully considered the submissions of the learned advocates. I have also closely perused the record. So far as the question of negligence is concerned, it can be decided on the basis of oral evidence of respondent no. 1 and respondent no. 2, as well as contemporary documents such as FIR, which is produced at Exh. 34 and panchnama which is produced at Exh. 35. Respondent no. 1 has given his evidence at Exh. 29. According to him, on the date of the accident he was proceeding from Modasa. When he reached the place called Rameshrakampa, he took his vehicle on the correct side and halted it. At that time, respondent no. 2 drove his bus in a rash and negligent manner and dashed it against

his vehicle. He, therefore, received serious injuries. In the cross-examination, he has admitted that there is a curve at the place where the accident took place. He has of course denied the suggestions that he drove his vehicle in a rash and negligent manner. As against that the evidence of respondent no. 2 is at Exh. 69. He has stated that he drove his vehicle on the correct side of the road and at moderate speed and it was respondent no. 1 who drove his vehicle at an excessive speed and dashed it against his bus. Of course, in the cross-examination, he had admitted that he had taken his bus on the west side of the road and he had left the bus there. The FIR is lodged against respondent no. 2 who was rash and negligent and responsible for causing the accident. So far as the panchnama of the scene of occurrence is concerned, it clearly shows that the bus was on the extreme wrong side of the road, so much so, that it has front two wheels on the shoulders of the tar road which is of the width of 12 ft. Its rear wheels were about 10 feet away from the correct side edge of the road. This itself shows that without any doubt that the bus was absolutely on its wrong side. The jeep was already on its correct side on kachha road. There is nothing on record to show that initially the head-on-collision took place on the correct side of the bus. Therefore, there is no

reason to believe that the accident occurred at the place where the vehicle was standing at the time of drawing of the panchnama, which would be the wrong side so far as the bus is concerned. Hence, I am in total agreement with the finding given by the Tribunal holding respondent no. 1 negligent of the act. Merely because according to the appellant, respondent no. 1 did not possess the valid license, it would not mean that he did know driving. When the fault is at the doors of respondent no. 2 and the appellant, the question with regard to license is immaterial. Hence, the submission of Mr. Shah cannot be accepted. At this juncture, it is stated by Mr. Japee that there is a short-fall of Rs.90,544. As against that Mr. Shah has stated that the entire amount has been deposited. In case, if the full amount is not deposited the appellant is now directed to deposit the same at the earliest and in any case, no later than six months from the date of this judgment together with interest and proportionate costs, as decided by the Tribunal.

7. The appeal has, therefore, no merits and it is dismissed with costs.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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